



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 05-31724-C-7  
 )  
10 THOMAS THRASHER and ) MC No. FLG-1  
11 MERCEDITAS THRASHER, )  
12 Debtors. )  
\_\_\_\_\_ )

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON MOTION FOR RELIEF FROM AUTOMATIC STAY

These findings of fact and conclusions of law are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014. Evidence was taken pursuant to Federal Rule of Civil Procedure 43(e), as incorporated by Federal Rule of Bankruptcy Procedure 9017 and as invoked by Local Bankruptcy Rule 9014(e).

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

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### Findings of Fact

Debtors filed their voluntary chapter 7 petition on September 15, 2005. They scheduled real property commonly known as 124 James River Road, Vallejo, California ("property") as property of the estate. The first meeting of creditors was held on October 21, 2005. The chapter 7 trustee filed a report finding that there is no property available for distribution from the estate over and above that exempted by the debtor. The court observes that debtors were discharged from all dischargeable debts on December 27, 2005.

On December 19, 2005, Warren M. Adams and David K. White ("movants") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movants to foreclose upon the property. The fair market value of the property is approximately \$515,000. Movants have a lien on the property in the approximate amount of \$26,546.79. Other liens against the property total \$873,437.59. No opposition to the motion was filed. Upon review of the record, the court determined that the written record was adequate and that no oral argument is necessary.

## Conclusions of Law

The automatic stay of acts against debtors in personam and of acts against property other than property of the estate continues until the earliest of the time when the bankruptcy case is closed, dismissed, or an individual in a chapter 7 case is granted a discharge. 11 U.S.C. § 362(c).

The automatic stay may be terminated earlier if

1 debtors fail to protect the secured party's interest  
2 adequately, § 362(d)(1), and, with respect to a stay of an act  
3 against property, debtors do not have equity in the property, §  
4 362(d)(2)(A), and the property is not necessary to an effective  
5 reorganization. 11 U.S.C. § 362(d)(2)(B). The issue of  
6 whether the property is necessary to an effective  
7 reorganization is not considered in a chapter 7 case because no  
8 reorganization is contemplated in a chapter 7 case.

9                 Although the debtors do not appear to have any  
10 equity in the property, since the debtors were granted a  
11 discharge, the motion for relief from the automatic stay is  
12 moot as to the debtors. Thus, the motion will be denied.

13                 However, because the chapter 7 trustee filed a no  
14 asset report, and filed no opposition to the motion, the motion  
15 will be granted as to the trustee.

16                 An appropriate order will issue.

17                 Dated: February 3, 2006

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19                 UNITED STATES BANKRUPTCY JUDGE  
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1                   **CERTIFICATE OF SERVICE**

2                   On the date indicated below, I served a true and  
3 correct copy(ies) of the attached document by placing said  
4 copy(ies) in a postage paid envelope addressed to the person(s)  
hereinafter listed and by depositing said envelope in the  
United States mail or by placing said copy(ies) into an  
interoffice delivery receptacle located in the Clerk's Office.

6                   Thomas and Merceditas Thrasher  
7                   124 James River Road  
Vallejo, CA 94591

8                   Gerard D. Launay  
9                   2119 Addison St. #A  
Berkeley, CA 94704-1455

10                  Prem Dhawan  
11                  P.O. Box 965  
Benicia, CA 94510

12                  Office of the United States Trustee  
13                  United States Courthouse  
501 "I" Street, Suite 7-500  
14                  Sacramento, CA 95814

15                  Albert M. Lavezzo  
Favaro, Lavezzo, Gill, Caretti & Heppell  
16                  Courthouse Plaza, Suite A  
300 Tuolumne Street  
17                  Vallejo, CA 94590

18                  Adams and White  
Marina Vista Dental  
19                  286 Mare Island Way  
Vallejo, CA 94590

20                  Dated: 2/1/06

21                  Barbara Reynolds  
22                  Deputy Clerk  
23                  BARBARA REYNOLDS

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